

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

In the Matter of Protest of:)

CASE No. 2009-122

Superior Vision)

Budget and Control Board)

Employee Insurance Programs)

Group Vision Benefits Plan)

POSTING DATE:

July 1, 2009

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Superior Vision (Superior). With this request for proposals (RFP), the Budget and Control Board's Employee Insurance Programs (EIP) attempts to procure a group vision benefit plan for all state employees and covered dependents. In the letter, Superior protested EIP's intended award to EyeMed Vision Care (EyeMed) alleging that:

We maintain that the outline of the Vision Care Program is wide and varied. A key component of the evaluation must be conducted on the same and specific components of the plan coverage such as frequency, frame allowance, copayments (if applicable), contact lens offerings, lens add-ons and upgrades, additional value adds, and eye examination definition. Rates and coverage can only be compared fairly and without prejudice if they are outlined and determined in advance that a competent underwriting process can be applied to the rate calculations.

Superior Vision believes an adequate relief from this protest would be a) the receipt of the weight by category of the evaluation criteria, b) sufficient time to respond to any marked deficiencies, and c) the opportunity to receive, match, and resubmit the benefit outline that was selected with the corresponding rates for that benefit.

EIP and EyeMed asked the CPO to dismiss the protest as untimely filed arguing that the Superior's protest was of the solicitation requirements, not the award.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

MOTIONS TO DISMISS

The motions to dismiss the protest are attached and incorporated herein by reference

FINDINGS OF FACT

This matter involves an RFP for a Vision Benefits Plan for State Employees and covered dependents. The RFP was issued on February 24, 2009. There was a mandatory pre-proposal conference held on March 10, 2004. Amendments to the RFP were issued on March 26, 2009 (Amendment One), April 6, 2009 (Amendment Two) and April 8, 2009 (Amendment Three). An Intent to Award was issued to EyeMed on May 29, 2009. The CPO received Superior's protest June 5, 2009.

Amendment One addressed and modified in some degree the selection process and Award Criteria. The Amendment One responses to questions and changes were posted to vendors on March 26, 2009.

Regarding plan design, according to Amendment One, the following question was asked by a prospective offeror other than Superior:

8. What plan design might the State be most interested in? Or do you prefer we quote the most popular?

Response: Offerors should propose, in detail, their proposed Group Vision Benefits Plan (design) which they believe best meets the requirements of this group and will encourage enrollment of eligible participants by balancing comprehensive benefits with reasonable premiums, taking into consideration the elements listed in Part VI, Information For Offerors To Submit, Item A. Offeror's Proposed Group Vision Benefits Plan.

Question 19, also from a prospective offeror other than Superior, asked:

No specific plan design was requested in the RFP; may we propose a selection of different plan designs?

Response: No. Offeror's shall submit only one proposed plan design. Please see the response to question number eight (8) above.

Superior asked three questions concerning plan design that were responded to by EIP as follows:

21. No benefit frequencies, co-pays or benefit amounts are stated in the RFP, are there any particular benefits, co-pays, etc. that need to be presented?

Response: No. Please see the response to question numbers eight (8) and nineteen (19) above.

22. Do you want to see only one plan of co-pay and benefits, or do you want to see several options of co-pays, benefit frequencies and benefit amounts?

Response: Only one (1). Please see the response to question numbers eight (8) and nineteen (19) above.

23. In working with other state entities and large private employers we often offer multiple plan options, also known as Standard/High option plans, would you be interested in seeing these proposed, or do you want just one offering?

Response: Just one (1) offering. Please see the response to question numbers eight (8) and nineteen (19) above.

EIP and EyeMed contend that EIP notified Superior that it did not plan to set strict parameters for a defined benefit plan. Instead, EIP refused to specify a specific plan opting rather to invite proposals from offerors to present their best solutions for the best plan design. EIP argues that it notified Superior of its intention not to specify a specific plan design when it issued Amendment One on March 26, 2009. The CPO agrees.

CONCLUSIONS OF LAW

The Consolidated Procurement Code (Code) allows offerors two opportunities to protest. First, the Code provides prospective bidders the right to protest the solicitation requirements. It reads, “A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(a) within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue.” The RFP was issued on February 24, 2009. There was a mandatory pre-proposal conference held on March 10, 2009. Amendments to the RFP were issued on March 26, 2009 (Amendment One), April 6, 2009 (Amendment Two) and April 8, 2009 (Amendment Three). Superior (as well as other prospective vendors) asked questions, which were answered in Amendment One, about plan design. Amendment One also addressed and modified in some degree the selection process and Award Criteria. The Amendment One responses to questions and changes were posted to vendors on March 26, 2009.

If Superior was aggrieved regarding EIP’s response to the structure of the solicitation, Superior should have protested within fifteen days of the issuance of Amendment One on April 6, 2009. Applying the statute in the manner most advantageous to Superior, Superior should have protested within fifteen days of EIP’s issuance of Amendment Three, the last amendment issued, within fifteen days of April 8, 2009. Instead, Superior filed its protest with the CPO on June 5, 2009 after it lost the award.

Second, the Code provides actual offerors the right to protest the award. It reads, “Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in

subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.” [11-35-4210] [Emphasis added]

In the motions, EIP and EyeMed argued that the EIP responses in Amendment One gave Superior notice of the requirements of the RFP specific to its allegations that the RFP could require responses that were wide and varied; that the evaluation would be conducted on diverse components of the plan coverage; and rate and coverage options. The CPO agrees. Superior claims that its protest is of the intent to award, not the solicitation. However, its protest issues read otherwise. Superior wrote, “As outlined in Part VI, paragraph 3, of the section Information for Offerors to Submit the evaluation process is the review of a set of answered questions, affirmations, and exhibits about product design, benefit outlines, and the company that will provide such services . . . We maintain that the outline of a Vision Benefit Program is wide and varied (alleging that Superior was aggrieved by this requirement). A key component of the evaluation must be conducted on the *same and* specific components of the plan coverage.”

In its Motion to Dismiss, EyeMed argued, “Superior’s protest, dated June 5, 2009 is not an award protest. It does not challenge the responsiveness or responsibility of the selected vendor. It does not allege any defect in the award.” The CPO agrees. Superior did not allege that the evaluators were arbitrary or capricious in their evaluation. Superior did not challenge its scoring by the evaluators who rated Superior’s proposal last among the five offers received. The composite scores were:

1. EYEMED:	435.5
2. DAVIS VISION:	387.5
3. UNITED HEALTH CARE/SPECTERA:	381.5
4. VISION SERVICE PLAN (VSP):	378.75
5. SUPERIOR VISION:	375

EyeMed argued further, “Instead, superior disputes or questions the very process and approach to award that was announced in Amendment One more than two months before. It complains that the solicitation lacked a predefined benefit plan, and that the exact award criteria weightings were not stated in the solicitation (the relative weightings were indisputably given, as required). These protests are protests of the specifications, the solicitation and the Amendment – not of the award. Accordingly, the deadline for those protests had passed and expired over a month before this protest was raised. Although Superior protested the specification, Superior did not do so until after it learned that it did not win.” The CPO agrees.

In Amendment One the following two items regarding the award criteria and process were included:

5. Amend Part VI, Information For Offerors To Submit, Item B., Offeror’s Proposed Group Vision Benefits Plan Premium Rates, by deleting it in its entirety and replacing it with the following:

B. Offeror’s Proposed Group Vision Benefits Plan Premium Rates

Offerors should provide their proposed Group Vision Benefits Plan Premium Rates in the following format. Premium Rates will be fixed for the initial contract period (January 1, 2010 through December 31, 2011). Offeror’s proposed premium rates shall include all costs associated with providing the Group Vision Benefits Plan. Offeror’s proposed Group Vision Benefits Plan Premium Rates will not be an evaluation factor but will be utilized during the negotiation process.

Coverage Type	Monthly Premium
Employee Only	
Employee Plus Spouse	
Employee Plus Child(ren)	
Employee Plus Family	

And

7. Amend Part VII, Award Criteria, by deleting it in its entirety and replacing it with the following:

PART VII

AWARD CRITERIA

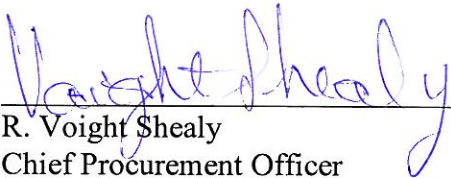
Proposals will be evaluated by a review panel on the basis of the following criteria, listed in order of importance:

- A. Offeror's proposed Group Vision Benefits Plan.
- B. Offeror's proposed Group Vision Benefits Plan Provider Network.
- C. Offeror's proposed Approach
 - Account Management
 - Enrollment and Eligibility Determination
 - Claims Processing and Payment
 - Billing and Collection of Premiums
 - Customer Service
 - Communications and Training
 - Reporting
 - Performance Standards and Associated Guarantees (Penalties)
 - Implementation Plan

Regarding evaluation criteria to be used for scoring proposals, the Code requires, "The request for proposals must state the relative importance of the factors to be considered in evaluating proposals but may not require a numerical weighting for each factor." [11-35-1530(5)] Clearly, EIP informed Superior of the relative importance of the evaluation criteria. Therefore, EIP met the Code's requirements to list the relative importance of the evaluation factors.

DETERMINATION

In their Motions to Dismiss, EIP and EyeMed argued “the Chief Procurement Office is without jurisdiction to entertain this protest” due to Superior’s failure to file the protest with the CPO within the statutory time limitations. The CPO agrees. The Procurement Review Panel has ruled consistently that the filing requirement is jurisdictional. The CPO simply lacks the requisite jurisdiction to hear a case filed outside the filing window. The Panel also provided guidance on a very similar situation with its ruling in Protest of First Sun EAP Alliance, Inc., Case No. 1994-11 when it wrote, “The issuance of the intent to award does not modify or extend the statutorily established time to protest a solicitation or amendment document.” This protest was filed on June 5, 2009 over 56 days late (from March 26, 2009 when EIP posted Amendment One answering vendor questions regarding plan design). Consequently, the protest is dismissed.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services



Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

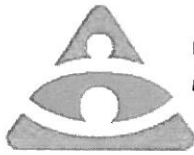
(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2008 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).



Superior Vision®

Our Members. Our Mission.

June 5, 2009

Chief Procurement Officer
Materials Management Office
1201 Main Street,
Suite #600
Columbia, SC 29201

VIA EMAIL to:
protest-mmo@mmo.sc.gov

Regarding Solicitation: Provide a Group Vision Benefits Plan
For the State of South Carolina

To the Chief Procurement Officer:

Superior Vision respectfully requests a review of the Intent to Award your Vision Benefit Plan to EyeMed Vision Care.

As outlined in Part VI, paragraph 3, of the section Information for Offerors to Submit the evaluation process is the review of a set of answered questions, affirmations, and exhibits about product design, benefit outlines, and the company that will provide such services.

We maintain that the outline of a Vision Benefit Program is wide and varied. A key component of the evaluation must be conducted on the *same and specific* components of the plan coverage such as frequency, frame allowance, copayments (if applicable), contact lens offerings, lens add-ons and upgrades, additional value-adds, and eye examination definition. Rates and coverage can only be compared fairly and without prejudice if they are outlined and determined in advance that a competent underwriting process can be applied to the rate calculations. The lack of a pre-defined benefit plan placed Superior Vision in an unfair disadvantage of comparing benefit outlines and rates.

Superior Vision feels that adequate relief to this protest would be a) the receipt of the weight by category of the evaluation criteria, b) sufficient time to respond to the any remarked deficiencies, and c) the opportunity to receive, match, and re-submit the benefit outline that was selected with the corresponding rates for that benefit.

Superior Vision has a demonstrated track record of unparalleled service for state governments, a dynamic provider network, and a sincere desire to be selected as the vision carrier for the employees of the State of South Carolina.

We look forward to hearing from you at your earliest convenience. My direct contact information is 916-859-6218 or rcorbett@superiorvision.com.

Sincerely,

Rick Corbett
President and CEO

LAW OFFICES
CRAIG K. DAVIS, P.C.
1524 Buck Hill Landing Road
RIDGEWAY, SOUTH CAROLINA 29130

CRAIG K. DAVIS (DC & SC)
OF COUNSEL
JAMES F. FLANAGAN

June 15, 2009

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E-MAIL
davislawfirm@earthlink.net

Voight Shealy, Chief Procurement Officer for Materials Management
S.C. Budget and Control Board
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

VIA Email TO: vshealy@mmo.state.sc.us

RE: Employee Insurance Benefits RFP for Group Vision Benefits Plan
Protest by Superior Vision Dated June 5, 2009
Our File No.: 0126.149

Dear Mr. Shealy:

This firm represents the Employee Insurance Program (EIP) in connection with the protest dated June 5, 2009 filed by Superior Vision (Superior) following the award to Eye Med Vision Care dated May 29, 2009. Please notice our appearance as counsel.

Please accept this letter as EIP's Motion to Dismiss Superior's protest pursuant to S.C. Code Section 11-35-4210 (1)(a) for lack of jurisdiction and for dismissal without a hearing. Briefly, the protest is untimely as it arises from the solicitation documents and was filed both after the applicable statutory time period and not until after the Intent to Award had been issued.

BACKGROUND

This is a Request for Proposal (RFP) source selection process pursuant to S.C. Code Section 11-35-1530 issued by EIP on February 24, 2009. Three amendments were issued as follows: Amendment One was issued on March 26, 2009; Amendment Two was issued on April 6, 2009 and Amendment Three was issued two days later on April 8, 2009.¹ In Amendment One, the following question was asked by a prospective offeror other than Superior:

8. What plan design might the State be most interested in? Or do you prefer we quote the most popular?

¹ All documents referred to are posted at <http://www.mmo.sc.gov/MMO/spo/MMO-eip-solicitations.phtm>

Mr. Voight Shealy, CPO
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Response: Offerors should propose, in detail, their proposed Group Vision Benefits Plan (design) which they believe best meets the requirements of this group and will encourage enrollment of eligible participants by balancing comprehensive benefits with reasonable premiums, taking into consideration the elements listed in Part VI, Information For Offerors To Submit, Item A. Offeror's Proposed Group Vision Benefits Plan.

Question 19, also from a prospective offeror other than Superior, asked:

No specific plan design was requested in the RFP; may we propose a selection of different plan designs?

Response: No. Offeror's shall submit only one proposed plan design. Please see the response to question number eight (8) above.

Superior asked three questions concerning plan design and that were responded to by EIP as follows:

21. No benefit frequencies, co-pays or benefit amounts are stated in the RFP, are there any particular benefits, co-pays, etc. that need to be presented?

Response: No. Please see the response to question numbers eight (8) and nineteen (19) above.

22. Do you want to see only one plan of co-pay and benefits, or do you want to see several options of co-pays, benefit frequencies and benefit amounts?

Response: Only one (1). Please see the response to question numbers eight (8) and nineteen (19) above.

23. In working with other state entities and large private employers we often offer multiple plan options, also known as Standard/High option plans, would you be interested in seeing these proposed, or do you want just one offering?

Response: Just one (1) offering. Please see the response to question numbers eight (8) and nineteen (19) above.

Also in Amendment One the following two items regarding the award criteria and process were included:

5. Amend Part VI, Information For Offerors To Submit, Item B., Offeror's Proposed Group Vision Benefits Plan Premium Rates, by deleting it in its entirety and replacing it with the following:

B. Offeror's Proposed Group Vision Benefits Plan Premium Rates

Offerors should provide their proposed Group Vision Benefits Plan Premium Rates in the following format. Premium Rates will be fixed for the initial contract period (January 1, 2010 through December 31, 2011). Offeror's proposed premium rates shall include all costs associated with providing the Group Vision Benefits Plan. Offeror's proposed Group Vision Benefits Plan Premium Rates will not be an evaluation factor but will be utilized during the negotiation process.

Coverage Type	Monthly Premium
Employee Only	
Employee Plus Spouse	
Employee Plus Child(ren)	
Employee Plus Family	

And

7. Amend Part VII, Award Criteria, by deleting it in its entirety and replacing it with the following:

PART VII

AWARD CRITERIA

Proposals will be evaluated by a review panel on the basis of the following criteria, listed in order of importance:

- A. Offeror's proposed Group Vision Benefits Plan.
- B. Offeror's proposed Group Vision Benefits Plan Provider Network.
- C. Offeror's proposed Approach
 - Account Management
 - Enrollment and Eligibility Determination
 - Claims Processing and Payment
 - Billing and Collection of Premiums
 - Customer Service
 - Communications and Training
 - Reporting

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Performance Standards and Associated Guarantees (Penalties)
Implementation Plan

D. Offeror's Background and Qualifications.

Prior to this change, the original RFP included as item VII B: "Offeror's proposed Group Vision Benefits Plan Premium Rates". This factor was deleted in Amendment One. Neither of the other two amendments (Amendment Two or Amendment Three) contained any follow up questions related to the design of the benefit plan nor the revised award criteria.

DISCUSSION AND AUTHORITIES

Given that Superior had asked questions concerning the plan design and that the award criteria were revised in Amendment One, together with the fact that no follow up questions were asked about either the plan design or award criteria by Superior, the deadline for filing any protests arising from the "...solicitation documents, ..., or any amendment to it, if the amendment is at issue..." was Friday April 10, 2009 pursuant to S.C. Code Section 11-35-4210(1)(a).

Superior's protest, read most favorably to Superior and free of any inferences or interpretations, plainly arises from the RFP and Amendment One. Superior's protest asserts:

As outlined in Part VI, paragraph 3, of the section Information for Offerors to Submit the evaluation process is the review of a set of answered questions, affirmations, and exhibits about product design, benefit outlines, and the company that will provide such services.

We maintain that the outline of a Vision Benefit Program is wide and varied. A key component of the evaluation must be conducted on the *same and* specific components of the plan coverage such as frequency, frame allowance, copayments (if applicable), contact lens offerings, lens add-ons and upgrades, additional value-adds, and eye examination definition. Rates and coverage can only be compared fairly and without prejudice if they are outlined and determined in advance that a competent underwriting process can be applied to the rate calculations. The lack of a pre-defined benefit plan placed Superior Vision in an unfair disadvantage of comparing benefit outlines and rates.

Superior Vision feels that adequate relief to this protest would be a) the receipt of the weight by category of the evaluation criteria, b) sufficient time to respond to the any remarked deficiencies, and c) the opportunity to receive, match, and re-submit the benefit outline that was selected with the corresponding rates for that benefit.

Plainly, the ground for this protest is a dispute over the award criteria and process as seen

Mr. Voight Shealy, CPO

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from the claim "...[t]he lack of a pre-defined benefit plan placed Superior Vision in an unfair advantage of comparing benefit outlines and rates." This arises directly from the questions posed and clearly answered, together with the revision to the Award Criteria, all without follow up questions, in Amendment One as recited above.

Under Section 11-35-4210(1)(a), protests arising from a solicitation must be filed within 15 days after the solicitation is issued or from the date of any amendment, if the amendment is at issue. Protest of Mechanical Contractors Association of S.C., Case No. 1995-12 ("The Panel finds that an amendment would only be "at issue" if it provided new or different information than the solicitation documents. Otherwise, the fifteen days for protesting the solicitation would be extended by any amendment issued."). The last deadline for protesting anything in this solicitation would have to be within 15 days from Amendment #1 as this is the last event pertinent to Superior's protest. Amendment #1 was issued on March 26, 2009. Fifteen days from March 26 is Friday, April 10, 2009 counting from March 27 to April 10 inclusively. Protest of First Sun EAP Alliance, Inc., Case No. 1994-11 ("[T]he issuance of the intent to award does not modify or extend the statutorily established time to protest a solicitation or amendment document."). This protest was filed on June 5, 2009 over 56 days late. Filing deadlines are jurisdictional. Protest of Companion Property and Casualty Insurance, Case No. 2004-4 (The CPO found that he lacked jurisdiction because the protest was not filed within 15 days as required by 11-35-4210(1)"). See, also, In Re: Protest of Computer Management and Consulting Inc, CPO Decision 2009-221, May 8, 2009 ("CMC's letter of protest was not received by the CPO until March 20, 4 days after the issuance of the Intent to Award and 81 days after the facts giving rise the CMC's issue of protest were published in the original solicitation. CMC's right to protest this issue expired 15 days after the issuance of the original solicitation and consequently the CPO lacks jurisdiction to hear the issues of protest." At p.3.)

Therefore, the Chief Procurement Office is without jurisdiction to entertain this protest. It is also requested that this matter be expedited and processed quickly. This is a new undertaking for EIP and significant roll out activities are required prior to the Benefits Administrators Benefits at Work Conference in August. This includes preparation of communications materials, training the Benefits Administrators about this new plan, and getting materials finalized and printed prior to the initial introduction in order to achieve an effective and successful enrollment period.²

CONCLUSION

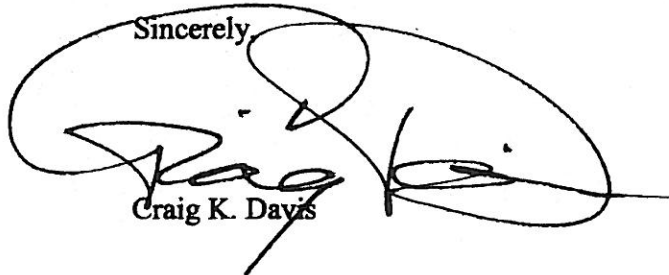
Accordingly, it is respectfully submitted that the protest of Superior is untimely and must be dismissed without a hearing and processed promptly.

² The successful offeror's proposal indicated that 180 days was required for implementation for a program start date of January 1, 2010, which would mean that on or around July 1 implementation should commence.

Mr. Voight Shealy, CPO
June 15, 2009
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If you should have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Craig K. Davis', is written over the word 'Sincerely,'. The signature is stylized with large loops and a long horizontal stroke at the end.

Craig K. Davis

cc: Rick Corbett, Pres. and CEO, Superior Vision, via email to: rcorbett@superiorvision.com.
David Quiat, EIP, via Email to: DQuiat@eip.sc.gov
Kelly H. Rainsford, Esq., EIP, via email to: krainsford@digs.sc.gov
Melissa Copeland, Esq., Counsel for Eye Med, via email to: missy.copeland@thesclawfirm.com
Keith McCook, Esq., MMO, via email to: kmccook@mmo.sc.gov



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June 18, 2009

Via e-mail to vshealy@mimo.state.sc.us

Voight Shealy
Chief Procurement Officer
Materials Management Office
South Carolina Budget and Control Board
1201 Main Street, Suite 600
Columbia, South Carolina 29201

Re: Employee Insurance Benefits RFP for Group Vision Benefits Plan
Protest of Superior Vision

Dear Mr. Shealy:

We represent EyeMed Vision Care, LLC ("EyeMed") in connection with the protest of Superior Vision. In addition to joining in and supporting EIP's Motion as stated below, EyeMed respectfully requests that EIP's Motion be decided promptly and without a hearing. As stated by EIP, the vision benefit is a new offering for State employees and as such will require extensive implementation efforts by EyeMed and EIP. We agree with EIP's assertion that implementation efforts must begin on July 1, 2009. However, in order to meet that deadline, EyeMed and EIP need to begin meeting and planning the implementation efforts no later than next week (June 22-26). We agree with EIP that given the straightforward issues raised in EIP's Motion than no hearing is necessary. However, in the event that you determine a hearing is necessary, EyeMed would agree to an expedited scheduling of that hearing and/or a telephonic hearing.

EyeMed hereby moves to dismiss Superior's Protest and agrees with and incorporates the arguments raised in EIP's Motion to Dismiss which demonstrate that the Protest of Superior should be dismissed as untimely and for lack of jurisdiction. We will not repeat those arguments herein. Instead, we will simply join in the motion and summarize our position on this motion.

This matter involves an RFP for a Vision Benefits Plan for State Employees. The RFP was issued on February 24, 2009. There was a mandatory pre-proposal conference held on March 10, 2004. Amendments to the RFP were issued on March 26, 2009 (Amendment One), April 6, 2009 (Amendment Two) and April 8, 2009 (Amendment Three). An Intent to Award was issued to EyeMed on May 29, 2009.

There was extensive discussion at the pre-proposal conference about the plan design – the exact issue now raised in Superior’s protest. Also as stated in detail in EIP’s motion, Superior (as well as other prospective vendors) asked questions, which were answered in Amendment One, about plan design. Amendment One also addressed and modified in some degree the selection process and Award Criteria. The Amendment One responses to questions and changes were posted to vendors on March 26, 2009.

As quoted in detail in Mr. Davis’ letter, Superior’s protest, dated June 5, 2009 is not an award protest. It does not challenge the responsiveness or responsibility of the selected vendor. It does not allege any defect in the award. Instead, it disputes or questions the very process and approach to award that was announced in Amendment One more than two months before. It complains that the solicitation lacked a predefined benefit plan, and that the exact award criteria weightings were not stated in the solicitation (the relative weightings were indisputably given, as required). These protests are protests of the specifications, the solicitation and the Amendment – not of the award. Accordingly, the deadline for those protests had passed and expired over a month before this protest was raised.

Although Superior protested the specification, Superior did not do so until after it learned that it did not win. One doubts Superior would have had the same problems with the solicitation if it had won. This is exactly why the process in South Carolina demands that vendors state their grievances about the solicitation within 15 days after the solicitation or amendment is issued, which was before the award date. It is simply unfair to other vendors and the State for one vendor to hold issues about the solicitation or process until after it sees if it is awarded the business.

Most telling is Superior’s suggestion of a remedy. Each vendors knew the rules; each was free to propose a plan that it felt was best suited to the State of South Carolina employees given the data that was available to all vendors in advance and to price it and propose its features accordingly. But Superior has now protested that process, and asks that it be told what plan design and pricing won so that it can propose its new pricing (with knowledge of the winning pricing) against the winning plan design components. That was not the process all vendors, including Superior, agreed to when they submitted proposals in this process. Superior wrongly seeks a second bite at the apple.

Superior’s argument assumes or suggests that all that matters in the context of this solicitation are plan design and plan pricing. Effectively, Superior suggests an auction approach to award. But long ago it was properly decided that so many other factors mattered that the process to be used should be the RFP process. Many other factors were involved, were analyzed, judged and scored to arrive at an award. These factors, made known to all vendors, include the network

Voight Shealy
Chief Procurement Officer
Materials Management Office
South Carolina Budget and Control Board
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offered, and the experience and service that the vendors offer to support the plan design and pricing. Superior's effort to change the RFP now must be rejected as untimely.

For these reasons, and for the reasons stated in Mr. Davis' letter, and based on the authorities therein, the protest of Superior is untimely, and the CPO lacks jurisdiction or authority to hear that protest. EyeMed therefore respectfully requests that its Motion to Dismiss the protest of Superior be granted.

Very truly yours,



Melissa J. Copeland

cc:

Rick Corbett, Pres. And CEO, Superior Vision, via email to rcorbett@superiorvision.com
David Quiat, EIP, via email to dquiat@eip.sc.gov
Kelly H. Rainsford, Esq., EIP, via email to krainsford@digs.sc.gov
Craig Davis, Esq., Counsel for EIP, via email to davislawfirm@earthlink.net
Keith McCook, Esq., MMO, via email to kmccook@mmo.sc.gov



Superior Vision®
Our Members. Our Mission.

June 25, 2009

Mr. Voight Shealy
Chief Procurement Officer
MATERIALS MANAGEMENT OFFICE
1201 MAIN STREET, SUITE 600
COLUMBIA, SOUTH CAROLINA 29201

IN THE MATTER OF:
Protest of Superior Vision
Provide a Group Vision Benefits Plan
For the State of South Carolina
CASE NUMBER: 2009-122

Dear Mr. Shealy:

Thank you for the opportunity to respond to the defense motions of both EIP and Eyemed Vision Plan. Superior Vision respects the desire for a timely implementation process of their award, however, we would disagree that such rationale carries a greater weight than a selection process that may have been both vague and arbitrary; and which led to a selection that may not represent the best value for employees of the State in a vision plan.

We would disagree further that we have exceeded the statutory deadlines for completing and filing a protest to the award. On May 29, 2009, the Office of Procurement of the State of South Carolina issued an "Intent to Award" notification and cited Section 11-35-4210 as the legal and appropriate course of action for aggrieved parties to submit their protest in writing. On June 5, 2009, Superior Vision submitted its protest in writing to the legally required state office, enumerated the grounds for its protest, and further identified the relief requested. Further, this fully compliant response was submitted within ten days of the May 29th "Intent" notification.

We believe that we have fully complied with the hearing request guidelines as provided to us by the State of South Carolina and that any claims that a fully compliant submission be disregarded are without merit. We would expect that the State grant our request for a hearing and review in this matter and that those timely implementation requirements should not supersede the laws of the State.

Sincerely,

Rick Corbett
President